

REVISED AS OF
March 12, 2002

INDIVIDUAL RULES OF PRACTICE

ALLEN G. SCHWARTZ, UNITED STATES DISTRICT JUDGE

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(scheduling matters)
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RULES

I. PRETRIAL CONFERENCES: Within 45 days of the assignment of a civil case, the Court will schedule a pretrial conference to explore settlement, establish the content of a scheduling order, and hear counsel upon any matter they wish to raise informally. Counsel attending the pre-trial conference (and any other conference) shall hand a business card to the Courtroom Deputy. **Plaintiff's counsel must bring a courtesy copy of the complaint and defendant's counsel must bring a courtesy copy of the answer for use and retention by Chambers. ATTENDING COUNSEL at the pre-trial conference (and all other conferences before the Court) ARE REQUIRED TO BE LEAD TRIAL COUNSEL; counsel must be familiar with the facts and law applicable to the case and have authority to enter into stipulations and shall be prepared to make admissions regarding all matters that the participants may reasonably anticipate will be discussed. Additionally, counsel are expected to be prepared to make substantive, albeit preliminary, representations with respect to a strategy of settlement, pursuant to Fed.R.Civ.P. 16(c)(9). Conferences are generally informal and are held in Courtroom 14C. Counsel are requested to direct all statements to the Court and not to engage in argument with adversary counsel. In the exceptional circumstance where lead counsel is unable to attend a scheduled conference, lead counsel shall submit an affidavit, 24 hours in advance of the scheduled conference, setting forth counsel's prior engagement and the name of the attorney who will be attending the conference in lieu of lead counsel.**

Civil pretrial conferences will be generally scheduled on Mondays but may be scheduled by the Court for another time. Notice by counsel of inability to attend a previously scheduled pretrial conference must be made by letter at least 24 hours prior to the scheduled conference, and must contain a representation of notice to the adversary and an agreed upon Monday date and hour for the rescheduled conference that is not later than ten (10) Court days from the original date. Counsel are advised to consult Rule 16(f) and understand that authorized sanctions will be applied where warranted, since unexcused absence from such conferences impedes the Court's conduct of its docket, imposes unnecessary costs on litigants, and adversely affects the practice of opposing counsel who comply with these rules.

II. SCHEDULING ORDERS: At the initial pretrial conference, the Court, in consultation with counsel, will set a scheduling order that will include, but need not be limited to, closure dates for pleading motions, discovery, dispositive motions, the pretrial order, interim advice to chambers on settlement negotiations, and a trial date. Counsel will not receive from the Clerk of the Court a copy of the formal scheduling order entered by the Court, and formal notice of the dates set will be presumed received based upon the oral direction given by the Court at the pretrial conference. Any application to modify any scheduling order or part thereof must be made by letter to chambers no later than five (5) Court days prior to the first date sought to be modified, and must have attached a proposed formal order modifying (or if appropriate a stipulation to be so ordered by the Court) the scheduling order in effect, and should contain, if possible, the consent of the adversary. Normally, no more than one such extension shall be allowed, and the application must recite the number of previous modifications sought, and their disposition. Counsel are advised to consult Rule 16(f), which authorizes imposition of sanctions for failure to comply with a scheduling order.

III. PRE-MOTION CONFERENCES: Any party wishing to make a motion should write the Court (with a copy to all counsel) briefly describing the proposed motion and requesting a pre-motion conference. A pre-motion conference is required prior to the submission of motion papers unless the motion is made by order to show cause, seeks admission pro hac vice, or involves a person in custody. The requirement of a pre-motion conference does not extend the time to answer, move or take any other

action within a prescribed time. Such conferences will generally be held in Courtroom 14C on Mondays but may be scheduled by the Court for another time. Counsel should, however, consult Chambers Rules II and VII, regarding a variation in the scheduling of pre-motion conferences in discovery matters.

IV. MOTIONS: Subject to the Special Filing Rules set forth below, courtesy copies of all motions and pleadings must be delivered to the Mail Room (Room 870) and must be noted as such.

No originals will be accepted by Chambers. Originals must be filed with the Clerk of the Court. Counsel may make motions returnable by 10 a.m. on any Court day. Scheduling will be determined by the Federal Rules of Civil Procedure and the Local Rules, unless otherwise directed by the Court. Service must be in accordance with Local Rule 6.1. The Court will accept reply briefs on all motions. The Court does not routinely hear oral argument on civil motions and counsel should not appear on the return date. If the Court requires an oral argument, such argument will be scheduled by Chambers. In such cases, counsel are normally allocated no more than fifteen minutes for their oral presentation.

A pre-motion conference is not required before making any of the motions described in Federal Rule of Appellate Procedure 4(a)(4)(A). Such motions should be filed when served.

Special Filing Rules

All motions should be made in accordance with Local Rule 6.1 that specifies the times for making and responding to motions. Each party must serve its supporting papers on the opposing party, file the original papers with the Clerk of the Court, and a courtesy copy with Chambers. All courtesy copies should be clearly marked as "Courtesy Copies." When the motion is fully submitted, the moving party should send the Court a letter informing the Court that the motion is fully submitted and listing all of the relevant submissions. A copy of this letter must be sent to the non-moving party.

With respect to motions for summary judgment pursuant to Fed. R. Civ. P. 56, counsel are advised that the Court strictly enforces Local Rule 56.1. (See "56.1 Statements" below). With respect to motions for discovery and related matters pursuant to Fed. R. Civ. P. 26 through 37, see Chambers Rule VII, below. Counsel are advised to consult Local Rule 7.1, which requires that a memorandum of law with appropriate

authority accompany each motion or opposition papers filed. Failure to comply with this rule may result in the summary rejection of the papers filed.

Briefs that exceed 25 pages in length will not be accepted. Reply briefs may not exceed 15 pages in length. Briefs in excess of 10 pages must be accompanied by a table of contents and a table of authorities. Exhibits to briefs in excess of twenty pages must be separately bound. All exhibits should be tabbed and indexed.

Motions seeking dismissal of the complaint shall have appended a copy of the Complaint. A copy of any opinion or decision not available on-line should be provided to the Court.

IV.A. 56.1 STATEMENTS: A Statement of Undisputed Material Facts, pursuant to Local Rule 56.1, must be filed in conjunction with any summary judgment motion. Rule 56.1 Statements are to consist of a series of brief factual assertions each of which shall be separately numbered. Each factual assertion must be supported by specific citation to the evidentiary record submitted with the motion papers. For example, "Ms. Jones visited Dallas, Texas on July 10, 1993. Smith Affidavit at & 3; Hays Deposition at page 25." Legal argument is not appropriate in a 56.1 Statement. Each assertion must be a factual assertion, not a legal conclusion. The Statement of the party opposing the motion must similarly identify the numbered factual assertion and reference specific portions of the record that demonstrate that the particular assertion of fact is in dispute. For example, "Ms. Jones was in New York City at all times during the month of July 1993. Jones Affidavit at & 8; Walsh Deposition at pages 50-53." Papers which do not comply with these requirements may be rejected by the Court.

IV.B. DEFAULT JUDGMENTS: An application for the entry of a default judgment must be made in compliance with Local Civil Rules 55 and 77. Further, copies of the application must be served upon the party against whom the default judgment is sought.

V. ORDERS TO SHOW CAUSE AND PART I: All Orders to Show Cause and, where appropriate, Part I matters, must be approved by the Cashier's Office before they are brought to Chambers by counsel. Counsel must be prepared to provide answers to the following questions: (1) What is the civil action number of the case? (2) What is the basis of the Court's jurisdiction? (3) Has

opposing counsel been notified of the application? (4) If opposing counsel has not been notified of the application, why not? (5) Is there another action pending between the same parties (or some of the same parties) in this or any other Court? and (6) Is a bond required and, if so, what is the amount of the proposed bond? Such applications will generally not be granted unless all other parties have received notice and have had an opportunity to be heard.

Orders to Show Cause must be accompanied by a memorandum of law. The Court requires two courtesy copies of all submissions with respect to an Order to Show Cause.

No ex parte application against a governmental agency will be entertained absent a showing of such agency's wilful refusal to attend.

VI. ACTIONS REMOVED FROM STATE COURT: In all actions removed from State court, the parties removing that action shall, no later than five (5) days after filing a notice of removal, file and serve (with courtesy copies to Chambers) a statement that sets forth the following information:

1. The date(s) on which defendant(s) or their representative(s) first received a copy of the summons and complaint in the removed state court action.

2. The date(s) on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the date(s) set forth in item number 1.

3. In actions predicated upon diversity jurisdiction, whether any defendants who have been served are citizens of the state in which this Court sits.

4. If removal takes place more than thirty (30) days after any defendant first received a copy of the summons and complaint, the reasons why removal is made at this time and the date on which the defendant(s) first received a paper identifying the basis for such removal.

5. In actions removed on the basis of this Court's jurisdiction in which the action in state court was commenced more than one year before the date of removal, the reasons why this action should not summarily be remanded to State court.

6. Identify any defendant who had been served prior to the time of removal who did not formally join in the notice of removal and the reasons therefor.

All defendants to the action who join in the notice of removal shall file such a statement within the time period set forth herein, although the parties may file a joint statement as

long as such statement is signed by counsel for each party.

Any party who learns at any time that any of the information provided in the statement(s) filed contains information that is not correct shall immediately notify the Court in writing thereof.

VII. DISCOVERY: The Court expects that counsel will conduct discovery under the Rules in a responsible, flexible, accommodating, forthcoming, and wholly professional manner. (Counsel, for example, shall not "direct" a witness "not to answer" or respond that a request for information shall "be taken under advisement" or engage in any similar obstructive action.) The Court expects that, in furtherance of the above standards, the overwhelming majority of discovery problems and disagreements shall be resolved by counsel without the necessity of Court intervention. Such applications must be made by letter delivered to Chambers, with service on all interested parties, no later than the previous Wednesday at 5 p.m., in accordance with Local Rule 37.2, which is strictly enforced by the Court. No party should call Chambers requesting a telephone conference, unless the request is of an emergency nature. Counsel are advised to consult Fed. R. Civ. P. 37, which authorizes imposition of sanctions for failure to make or cooperate in discovery.

VIII. PRETRIAL PROCEDURES:

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order. This order, a prerequisite to proceeding to trial, shall be a single consolidated submission, jointly prepared, in strict compliance with the following standard format. The Court will not accept separate submissions.

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as

to citizenship and jurisdictional amount.

iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).

vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.

viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.

ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

x. A list by each party of exhibits to be offered in its case in chief, with one asterisk indicating exhibits to which no party objects on grounds of authenticity, and two asterisks indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial.

In civil jury cases, counsel shall submit a proposed voir dire in conjunction with the joint pre-trial order. Counsel shall provide the Court with the proposed voir dire in writing and on a 3.5 inch computer disk in Word Perfect 8.0.

In criminal jury cases, counsel shall provide opposing counsel and the Court, by noon on the Wednesday before trial, with a proposed voir dire. Counsel shall provide the Court with

the proposed voir dire in writing and on a 3.5 inch computer disk in Word Perfect 8.0.

In civil jury cases, counsel shall jointly prepare a proposed jury charge in accordance with the Court's Supplement to these rules. Counsel shall provide the Court with the proposed jury charge in writing and on a 3.5 inch computer disk in Word Perfect 8.0 at the time the joint pre-trial order is submitted. Counsel shall write out the proposed instructions rather than simply citing the requested pattern instructions.

In criminal jury cases, counsel shall provide opposing counsel and the Court with a proposed jury charge no later than the Wednesday before trial. Counsel shall provide the Court with the proposed jury charges in writing and on a 3.5 inch computer disk in Word Perfect 8.0. Counsel shall write out the proposed instructions rather than simply citing the requested pattern instructions.

In nonjury cases, counsel shall provide opposing counsel and the Court, not later than seven days prior to trial, with a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element.

In all cases, motions addressing any evidentiary or other issues which should be resolved in limine are to be brought to the attention of the Court at the earliest possible date.

In any case where such party believes it would be useful, counsel may submit a pretrial memorandum.

IX. RICO STATEMENT: All parties asserting claims pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. '1961, must file and serve upon opposing counsel (with a courtesy copy to Chambers) a RICO Statement (available in Chambers) within twenty (20) days of the filing of the pleading asserting the RICO claim.

X. TRIAL: Chambers will notify the parties of a fixed trial date once the pretrial order is filed. No further notice of the trial date will be given, and the parties will be expected to proceed on the date fixed. It is the Court's practice to meet with the parties on a day prior to the trial date.

In a civil case, at the final conference, the Court will briefly review the exhibits and witness lists. **Copies of pre-marked exhibits intended for introduction at trial must be exchanged by counsel prior to this conference.** In a civil case, the Court's copy of the pre-marked exhibits will be presented at that time, assembled sequentially in looseleaf book form, or if a party prefers, each exhibit will be placed in a separate manila folder with number visible on the lip, and the folders will be placed in a suitable container or box for ready reference. Each counsel will provide to the Court two copies of his or her final exhibit list. Counsel shall also provide copies to the Court of any depositions which are intended to be offered, in whole or part, into evidence. Depositions are not generally to be offered in their entirety. Except in the rare instance where all the testimony is relevant, only copy the relevant pages plus the page before and after any relevant page for context, staple the extracts from each deposition, and offer each as an exhibit, with the portion offered marked in the margin.

The trial day will normally commence at 9:30 a.m. and conclude at 4:15 p.m. on Tuesdays through Fridays. In jury cases, counsel are required to order daily copy of the official transcript, in order to facilitate resolution of disagreements on the appropriate jury charge, and to enable the Court to respond quickly to questions from the jury during deliberations.

A formal charge conference will normally be held at least one day prior to the date that the case is expected to be given to the jury. Counsel shall cooperate in the preparation of a joint proposed verdict sheet, including any Special Interrogatories they may desire. Counsel shall provide the Court with the proposed verdict form in writing and on a 3.5 inch computer disk in Word Perfect 8.0. In civil jury cases, counsel shall submit the proposed verdict form to be given to the jury in conjunction with the joint pre-trial order. In criminal jury cases, counsel shall submit the proposed verdict form no later than the first day of trial.

It is the practice of the Court to try non-jury cases through to conclusion without adjournments, and counsel should not expect, even on consent of the adversary, that an interruption in the taking of evidence will be permitted. **Additionally, in civil bench trials, and, where practicable, preliminary injunction hearings, the parties shall present affidavits of each of their witnesses in lieu of a direct**

examination. Counsel shall file and serve (with two courtesy copies to Chambers) their affidavits at least one day prior to the testimony of the particular witness.

In civil cases, the order of opening and closing arguments shall be determined by the standard that the party with the burden of proof opens first and closes last. No rebuttals are permitted.

At the end of trial, counsel should make certain that they have all their exhibits. The Court does not retain them and the Clerk is not responsible for them. Counsel should submit their exhibits when they file their post-trial briefs. Exhibits introduced into evidence are to be accompanied by notes identifying the testimony to which the exhibit relates.

In civil bench trials, counsel shall submit post trial findings of fact (with record cites) and conclusions of law in writing and on a 3.5 inch computer disk in Word Perfect 8.0.

XI. ORDERS: Parties are to confirm the issuance of an order either by checking The New York Law Journal, the docket sheet or the PACER system. Do not call Chambers.

XII. MISCELLANEOUS MATTERS: Telephone calls to Chambers relating to scheduling matters should be directed to the Courtroom Deputy between the hours of 9:00 A.M. and 5:00 P.M. (212)805-0121. Telephone calls to Chambers relating to general information should be directed to the Chambers Secretary on any Court day during the same hours. Telephone calls to Chambers relating to substantive legal aspects of pending cases should be avoided. Instead, counsel should communicate with the Court by letter, with copy to opposing counsel. Faxes are generally not permitted.

Counsel should not call the Judge's law clerks with respect to procedural questions. Except as otherwise provided herein, the Court's procedures are governed by the Local Rules of this Court and the Federal Rules of Civil Procedure.

Correspondence to the Court must contain the official docket number of the case. Correspondence must indicate that copies have been sent to all appropriate parties and indicate the means by which they have been sent and the address of said parties.

Original documents will not be accepted by Chambers.
The Court requires one courtesy copy (unless two are specified above) of all documents filed with the Clerk.

All deliveries must be brought to the Mail Room (Room 870).